



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 29, 2022

IN THE MATTER OF:

Appeal Board No. 624988

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed July 20, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked full time for approximately five months, through December 23, 2021, as an auto sales service cashier. The claimant also was attending school. In December 2021, the claimant asked the service director for the month of January off so she could take classes during her school's January session. The service director granted this request.

The claimant did not report to work as scheduled on December 24, 2021 because she was sick. She was not scheduled to work on December 25 or 26. When the claimant did not report for work as scheduled on December 27, the service director sent her a text message asking where she was. The claimant wrote back saying she was still sick and was waiting for medical test results. The

service director responded, "Ok. Feel better." The claimant's test results subsequently came back positive for COVID, and she remained sick into the first week of January.

On January 30, 2022, the claimant sent the service director a text message stating that she had completed her January classes. In this message, she also advised the service director of the work schedule and job assignment she wanted for the spring semester so she could work and attend school as well as care for her family. The service director wrote back, "I have to think about it. I will let you know what I decide." The service director never got back to the claimant with a definite assignment.

OPINION: The credible evidence establishes that the claimant separated from employment when she attempted to return from an approved leave of absence at the end of January 2022 and the employer failed to assign her work. The claimant's actions in arranging her leave of absence in advance and notifying the service manager when she was ready to return to work show that she did not leave her job voluntarily. Rather, the employer discharged her by not accepting her back to work. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER